



MONTANA PETROLEUM MARKETERS
& CONVENIENCE STORE ASSOCIATION

May 12, 2008

To: Petroleum Tank Release Fund Subcommittee
Senator Bob Story
Representative Rick Ripley
Representative Cynthia Hiner
Representative Sue Dickenson

Re: "Petro" Fund Solvency/Proposed Legislation

Members of the Subcommittee,

First, we want to thank you for agreeing to serve on this subcommittee to determine the best options available to ensure solvency of the Petroleum Tank Release Compensation Fund. I apologize for not being able to be in attendance at this initial meeting.

In this correspondence the Association would like to state its current position on the proposed legislative amendments approved by the "Petro" Fund Board and, offer further suggestions to what we believe to be a balanced approach to solving the "Petro" fund solvency issues.

"Petro" Fund Board Proposed Amendments to MCA

75-11-307 (4)(a) – Changing the deductibles and co-pay structure by increasing the deductible to 50% of the first \$50,000 of eligible costs and 95% of subsequent eligible costs, for a maximum total reimbursement of \$927,500. The Association has not taken a formal position on this portion of the amendments however, it will oppose this part unless other proposals are included which will be explained later in this document.

75-11-307(4)(b) – Changing the deductibles and co-pay structure for all other releases eligible for reimbursement to 50% of the first \$50,000, plus 95% of subsequent eligible costs up to a maximum of \$215,000. The Association supports these proposed amendments to the amount of Funds an unregulated tank may receive (heating oil, farm and ranch tanks of a certain size.) *Rationale: these tanks are not regulated or required to be in compliance with any of the standards (unless they so choose) that commercial tanks currently have to abide by to be covered by the Fund. In addition, the EPA regulations and insurance requirements do not apply to this population of tanks; they were never intended to be covered by the Fund in the implementing legislation.*

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75-11-307(5) (new) - To provide an incentive for tank owners to obtain private insurance by allowing those paid claims to apply directly to the deductible. The Association supports this proposed amendment. *Rationale; It makes sense to encourage tank owners to attempt to purchase private insurance for a portion of the liability coverage for their tanks if even for the first \$100,000 in liability. It also makes sense to apply that portion to their deductible as the Fund does not incur those costs.*

75-11-308(1)(b)(ii) – Requiring those tank owners with aboveground storage tanks who desire to be covered by the Fund to register said tanks and adhere to a compliance standard. The Association supports this proposed amendment. *Rationale; The industry believes that this population of tanks should be required to comply with similar standards as underground storage tanks. Tanks that are in compliance should rightly be covered by the Fund while at the same time encouraging a higher standard of operation.*

75-11-309 1)(h)(i) – Removing language for double-wall tank systems that allows 100% reimbursement of costs as an incentive to tank owners to install the double wall systems. The Association supports this proposed amendment. *Rationale; Due to the UST requirements of the Federal Energy bill of 2005 that all new tank systems be double-walled, the incentive no longer applies.*

75-11-313(3)(b) – Removal of department administration costs from payment by the "Fund". The Association would support this proposed amendment. *Rationale; While unlikely to occur, removing the \$1.6 million of Department administration costs from the Fund liability would allow those monies to go to claims payment and assist in balancing the budget.*

75-11-314(1)(a) – Increasing the per gallon fee paid by licensed distributors from ¾ cent to 1 cent. The Association would support this proposed amendment. *Rationale; Simply put, 3/4 cent does not go as far today as it did in 1989 while costs of clean-up have more than kept up with inflation. Due to the lack of risk-based cleanup standards, the drain on the Fund's available money is increasing instead of decreasing.*

As stated, this is the current position of the industry regarding the proposed options for your consideration. We believe however that there are further options that can be considered within the realm of the "clean-up" world governed by the Remediation Division of the DEQ. First, we firmly believe that by practicing a "risk-based" approach to implementing clean-ups from any hazardous material, you utilize the state's resources to the utmost capacity. If a site shows no further risk to health or the environment why would the state spend the taxpayer's money on these situations?

Currently, the Department is not using their stated prioritization plan as a mechanism to request work plans. They are using it as a mechanism to obligate funds. As the "Petro" Fund Board is now not obligating money for low-risk sites, this puts tank owners in a position to be in violation if not continuing with a previously directed work plan. They then must seek a formal extension from the Department. The Department is requesting work plans at low-risk sites when they know there is not available funding. Why?

We would offer the following suggestions for your consideration in recommending solutions to Fund solvency.

1. The Remediation Division should be directed by the Legislature to implement a "risk-based" approach to requiring work-plans, as other states have done successfully. If not using this approach in general, then it should at least be applied to sites eligible to the "Petro" Fund. While the Department states they have a risk approach "policy" in place, we do not believe it is being implemented in a structural way.
2. The same holds true for the on-going monitoring of sites. The Remediation Division should be directed by the Legislature to "risk" away monitoring by allowing ground water to remain with concentrations above State standards (which currently are stricter than Federal standards) as long as it's determined there is no risk to health or the environment. In other words, "trust your own science".
3. Another option the Legislature could consider is allowing a mixing zone concept that would utilize monitoring in a zone of natural attenuation at the edge of a property where it mixes with uncontaminated groundwater; rather than monitoring groundwater beneath a facility itself. This is done in other areas of State clean-up projects and has the potential to reduce monitoring costs.
4. Finally, the DEQ/Remediation Division has adopted a standard for clean water that is stricter to what the Federal Government currently requires. The Remediation Division however, is requiring an even stricter standard for cleanup of groundwater based on a technical "Guidance" document they have adopted from "within". It goes beyond what they have formally set as a clean water standard. Why? We would suggest that the Legislature direct the Department to adhere to the standards they have set in statute and rule. At the very least, they should be required to prove why a stricter standard in certain situations is warranted. We are very certain this would save the Fund vast amounts of resources.

I stated previously that the Association has not taken a formal position on the proposed amendment that would increase the deductibles and co-pays to the industry; in other words increasing the amount of money that a tank owner would be obligated to pay. We submit to you that the industry would be willing to take on additional burdens to itself if some of the options we have suggested were included in the legislative package. The Association will oppose that particular amendment however, if a balance is not sought with the Department way of doing business. Simply burdening the industry further will not alone solve the problems with the Fund's viability.

Thank you for the opportunity to make these comments. The Association looks forward to working with the committee and the Legislature to address these issues. Please do not hesitate to call on us.

Respectfully submitted;
Ronna Alexander, E.D.

